

	<p>was detected at this station in at least three other off-site monitoring wells at levels greater than the California Secondary MCL of 5 ppb: B-5, E-7, and E-15 (See OCWD-MTBE-001-264547 - 56), as follows:</p> <p>MTBE was detected in E-15 beginning on June 12, 1997 at 440,000 ppb, and was found in that monitoring well in three subsequent sampling events prior to May 6, 2000, at a minimum level of 250,000 ppb. (OCWD-MTBE-001-264556.) MTBE was detected in E-7 beginning on September 23, 1999 at 6.7 ppb, and was detected again on November 8, 1999 and February 12, 2000, each time at levels above 5 ppb. (OCWD-MTBE-001-264553.) MTBE was detected in B-5 beginning on March 14, 1996 at 6,500 ppb, and was detected in that monitoring well on nine separate monitoring events prior to May 6, 2000. (OCWD-MTBE-001-264547 - 48.)</p>	<p>and, according to Arco's consultant, has been used for purposes of core remedial activities. MW-8 is located downgradient of the furthest extent of the MTBE plume at Arco #1912 and has had detections of MTBE consistent with MTBE concentrations associated with this site. Prior to 2002, MW-8 was associated with and run by the adjacent Beacon Bay Car Wash station. In 2002, Arco assumed responsibility for operating and sampling MW-8 likely due to post-2000 conclusions that the MTBE in MW-8 may originated at either the Beacon Bay or Arco stations. The most recent remediation reports for the Arco #1912 do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. In my opinion as a hydrogeologist with extensive experience in remediation, this detection in MW-8 is the first real indication at this site that MTBE has escaped active remediation efforts and is threatening drinking water sources. (Bolin Decl., ¶ 27.)</p>	<p>either the Beacon Bay or Arco stations" (Bolin Decl. ¶ 27). His unfounded assertion as to purported "post-2000 conclusions that the MTBE in MW-8 may have originated" at ARCO #1912 is factually inaccurate (Finsten Decl. ¶ 5, Ex. 4), and amounts to baseless speculation. If a detection in MW-8 triggers accrual at ARCO #1912, the District's claims at this station are time-barred.</p> <p>Mr. Bolin is mistaken in claiming that there are no "further efforts to define the plume or expand the area of remediation ... underway or anticipated." (Bolin Decl. ¶ 27.) At each stage in the remediation process, and whenever new information becomes available, BP, its consultants, and the regulators, evaluate what additional or different actions, if any may be required. (Fah Decl. ¶¶ 3-4.) When new information becomes available indicating that a modification to the remediation measures being taken at a site is called for, appropriate action will be taken at any stage in the process, even years after an initial remediation program is commenced. (<i>Id.</i> ¶¶ 4-5.) (See discussion of new remedial technology proposed in January 2009 at station ARCO # 1887, ¶ 3 above.)</p> <p>Although Mr. Bolin purports to offer his "opinion as a</p>
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			hydrogeologist with extensive experience in remediation,” he testified during his deposition that he is “not an expert in remediation,” “remedial technologies,” or “fate and transport analysis.” (See discussion in ¶ 2 above.)
Thrifty #383 18520 Brookhurst St. Fountain Valley	<p>19. The MTBE detection in well OCWD-M10 on which OCWD’s accrual date is based was at 3 ppb. (Costley 2009 Decl. Ex. 1C.)</p> <p>However, the District’s own interrogatory answers confirm that the May 7, 2002 MTBE detection in OCWD-M10 was not the first detection of MTBE in this well, and that in fact MTBE was first detected in OCWD-M10 on September 12, 1995, at a level of 1 ppb. (See ¶ 17 <i>supra</i>.)</p>	<p>19. Mr. Costley cites a single detection of MTBE in one of the designated wells for Plume 3, OCWD-M10, to assert that the District’s claims are time-barred for these stations. <i>See</i> Costley Decl., Ex. 1C. MTBE was detected at 1 ppb in monitoring well OCWD-M10 on September 12, 1995. (Ex. 11, Plaintiff Orange County Water District’s Second Supplemental Responses to Defendants Preliminary Interrogatories re Standing at Ex. 1A “Orange County Water District Owned Wells.”) MTBE was not detected in this well again until September 2006. (<i>Ibid.</i>) This MTBE detection did not exceed any regulatory limits in place in 1995. Specifically, in 1991 the State of California set an Action Level of 35 ppb for MTBE, and the Action Level was the only regulatory limit for MTBE until the Secondary Maximum Contaminant Level of 5 ppb was set in 1999. The September 1995 detection of MTBE in OCWD-M10 was also below the 15 to 45 ppb range that the District understood to be the taste and odor threshold for MTBE in drinking water at the time. (Bolin Decl., ¶ 28.)</p>	<p>19. <i>See</i> ¶ 17 <i>supra</i> for discussion of pre-May 6, 2000 MTBE detections in OCWD-M10.</p>

<p>Beacon Bay Car Wash 10036 Ellis Ave. Fountain Valley</p>	<p>20. The MTBE detection in well OCWD-M10 on which OCWD's accrual date is based was at 3.0 ppb. (Costley 2009 Decl. Ex. 1C.)</p> <p>However, the District's own interrogatory answers confirm that the May 7, 2002 MTBE detection in OCWD-M10 was not the first detection of MTBE in this well, and that in fact MTBE was first detected in OCWD-M10 on September 12, 1995, at a level of 1 ppb. (<i>See</i> ¶ 17 <i>supra</i>.)</p>	<p>20. Mr. Costley cites a single detection of MTBE in one of the designated wells for Plume 3, OCWD-M10, to assert that the District's claims are time-barred for these stations. <i>See</i> Costley Decl., Ex. 1C. MTBE was detected at 1 ppb in monitoring well OCWD-M10 on September 12, 1995. (Ex. 11, Plaintiff Orange County Water District's Second Supplemental Responses to Defendants Preliminary Interrogatories re Standing at Ex. 1A "Orange County Water District Owned Wells.") MTBE was not detected in this well again until September 2006. (<i>Ibid.</i>) This MTBE detection did not exceed any regulatory limits in place in 1995. Specifically, in 1991 the State of California set an Action Level of 35 ppb for MTBE, and the Action Level was the only regulatory limit for MTBE until the Secondary Maximum Contaminant Level of 5 ppb was set in 1999. The September 1995 detection of MTBE in OCWD-M10 was also below the 15 to 45 ppb range that the District understood to be the taste and odor threshold for MTBE in drinking water at the time. (Bolin Decl., ¶ 28.)</p>	<p>20. <i>See</i> ¶ 17 <i>supra</i> for discussion of pre-May 6, 2000 MTBE detections in OCWD-M10.</p>
<p>Arco #1905 18025 Magnolia St. Fountain Valley</p>	<p>21. The MTBE detection in well OCWD-M10 on which OCWD's accrual date is based was at 3.0 ppb. (Costley 2009 Decl. Ex. 1B.) However, under the District's accrual criteria, accrual may rest</p>	<p>21. Mr. Costley cites W-26 and W-27 at the Arco #1905 station associated with Plume 3 as examples of where "off-site" wells showed detections of MTBE prior to May 6, 2000, at a site where the District concluded there were no off-site wells, and therefore</p>	<p>21. <i>See</i> ¶ 17 <i>supra</i> for discussion of pre-May 6, 2000 MTBE detections in OCWD-M10.</p> <p>When deposed as the District's Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined</p>

	<p>on an MTBE detection in a water production well <i>only</i> “[f]or stations where no off-site monitoring wells were installed.” (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in two off-site wells at levels greater than the California Secondary MCL: W-26 and W-27, as follows:</p> <p>MTBE was detected in W-26 on December 2, 1999 at 84 ppb. (AROCWD19505454; OCWD-MTBE-265129.) MTBE was detected in W-27 beginning on December 2, 1999 at 110 ppb, and was found in that monitoring well in the next sampling event prior to May 6, 2000, at a minimum level of 60 ppb. (AROCWD19505455; OCWD-MTBE-265130.)</p> <p>Furthermore, the District’s own interrogatory answers confirm that the May 7, 2002 MTBE detection in OCWD-M10 was not the first detection of MTBE in this well, and that in fact MTBE was first detected in OCWD-M10 on September 12, 1995, at a level of 1 ppb. (See ¶ 17 <i>supra</i>.)</p>	<p>detections of MTBE in the nearest appropriate well provided the date on which the District’s cause of action accrued for releases from the station. See Costley Decl., Ex. 1B. These wells, however, do not indicate that MTBE has escaped remediation at this site. Groundwater contour maps demonstrate that the shallow groundwater flow is principally to the Southeast at this station. (Ex. 9.) W-26 and W-27 are located in close proximity to the release at the station and appear to be part of core remedial efforts. The most recent remediation reports for the Arco # 1905 site do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. In my opinion as a hydrogeologist with extensive experience in remediation, W-26 and W-27 are associated with the core remedial activities at this station. Therefore, the first real hydrogeologic evidence that MTBE had escaped was when MTBE had been detected in the District’s monitoring well OCWD-M10. (Bolin Decl., ¶ 26.)</p> <p>Mr. Costley cites a single detection of MTBE in one of the designated wells for Plume 3, OCWD-M10, to assert that the District’s claims are time-barred for these stations. See Costley Decl., Ex. 1C. MTBE was detected at 1 ppb in monitoring well OCWD-M10 on September 12, 1995. (Ex. 11, Plaintiff Orange County</p>	<p>“off-site contamination” as “[d]etections of MTBE in a well outside the boundaries of the property.” (Bolin Dep. 356:2-22; <i>see also id.</i> 1888:25-1890:3; 1933:12-1934:3.) Mr. Bolin also testified that an MTBE detection in a monitoring well “near the site boundary ... indicate[s] there is off-site contamination.” (<i>Id.</i> 357:4-16.)</p> <p>Mr. Bolin is mistaken in claiming that there are no “further efforts to define the plume or expand the area of remediation ... underway or anticipated.” (Bolin Decl. ¶ 26.) At each stage in the remediation process, and whenever new information becomes available, BP, its consultants, and the regulators, evaluate what additional or different actions, if any may be required. (Fah Decl. ¶¶ 3-4.) When new information becomes available indicating that a modification to the remediation measures being taken at a site is called for, appropriate action will be taken at any stage in the process, even years after an initial remediation program is commenced. (<i>Id.</i> ¶¶ 4-5.) (See discussion of new remedial technology proposed in January 2009 at station ARCO # 1887, ¶ 3 above.)</p> <p>Although Mr. Bolin purports to offer his “opinion as a hydrogeologist with extensive experience in</p>
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		<p>Water District's Second Supplemental Responses to Defendants Preliminary Interrogatories re Standing at Ex. 1A "Orange County Water District Owned Wells.") MTBE was not detected in this well again until September 2006. (<i>Ibid.</i>) This MTBE detection did not exceed any regulatory limits in place in 1995. Specifically, in 1991 the State of California set an Action Level of 35 ppb for MTBE, and the Action Level was the only regulatory limit for MTBE until the Secondary Maximum Contaminant Level of 5 ppb was set in 1999. The September 1995 detection of MTBE in OCWD-M10 was also below the 15 to 45 ppb range that the District understood to be the taste and odor threshold for MTBE in drinking water at the time. (Bolin Decl., ¶ 28.)</p>	<p>remediation," he testified during his deposition that he is "not an expert in remediation," "remedial technologies," or "fate and transport analysis." (See discussion in ¶ 2 above.)</p>
<p><b><u>PLUME NO.</u></b> <b><u>4</u></b> <b>SA-16</b></p>	<p>22. Plume 4 was previously addressed in the 2008 round of supplemental briefing, and Defendants' undisputed facts supporting their position regarding this plume can be found in their 56.1 statement submitted in that briefing at ¶¶ 29-34.</p>	<p>22. Defendants' prior response asserts that detections of MTBE below 1 ppb in SA-16 are insufficient to constitute a cognizable injury or to require the District to take action. For purposes of statute of limitations, therefore, defendants concede that the District's claims with respect to SA-16 and Plume 4 are not time-barred.</p> <p>2. Defendants' prior response also asserts that the District must prove that MTBE released at a Plume 4 station actually contaminated SA-16 in order to bring a claim. This</p>	

		argument is irrelevant for purposes of statute of limitations.	
Thrifty #376 (aka Arco #9740) 801 N. Bristol St. Santa Ana	<p>23. The MTBE detection in well SA-16 on which OCWD's accrual date is based was at 0.13 ppb. (Costley 2009 Decl. Ex. 1B.) However, under the District's accrual criteria, accrual may rest on an MTBE detection in a water production well <i>only</i> "[f]or stations where no off-site monitoring wells were installed." (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in one off-site well at a level greater than the California Secondary MCL: W-8. (See OCWD-MTBE-001-253213-14; AROCWD0974012333.) MTBE was detected in W-8 at a level of 9.4 ppb on June 29, 1999, again at a level of 20 ppb on September 23, 1999, and in the two subsequent testing events prior to May 6, 2000. <i>Id.</i></p>	<p>23. Mr. Costley cites W-8S at the Thrifty #376 station associated with Plume 4 as examples of where "off-site" wells showed detections of MTBE prior to May 6, 2000, at a site where the District concluded there were no off-site wells, and therefore detections of MTBE in the nearest production well provided the date on which the District's cause of action accrued for releases from the station. <i>See</i> Costley Decl., Ex. 1B. These wells, however, do not indicate that MTBE has escaped remediation at this site. Groundwater contour maps demonstrate that the shallow groundwater flow is principally to the Northwest to Northeast at this station. (Bolin Decl., Ex. 13.) W-8S is located in close proximity to the release at the station. The most recent remediation reports for the Thrifty #376 site do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. In my opinion as a hydrogeologist with extensive experience in remediation, these wells are associated with the core remedial activities at this station. Therefore, the first real hydrogeologic evidence that MTBE had escaped was when MTBE had been detected in a production well. (Bolin Decl., ¶ 30.)</p>	<p>23. When deposed as the District's Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined "off-site contamination" as "[d]etections of MTBE in a well outside the boundaries of the property." (Bolin Dep. 356:2-22; <i>see also id.</i> 1888:25-1890:3; 1933:12-1934:3.) Mr. Bolin also testified that an MTBE detection in a monitoring well "near the site boundary ... indicate[s] there is off-site contamination." (<i>Id.</i> 357:4-16.)</p> <p>To justify the District's reliance upon purported MTBE detections in a production well to establish its accrual date, Mr. Bolin's declaration asserts that "the District concluded designated there were no off-site wells" at Thrifty #376. (Bolin 2009 Decl. ¶ 30.) However, in notes prepared for last year's deposition, Mr. Bolin concluded that <b>"Off-site contaminant migration indicated [due to] MTBE detected in site margin wells in all directions"</b> (Bolin Dep. 2547:1-2548:5, Ex. 171) (emphasis in original).) His notes specifically identified an MTBE detection in site margin well W-16 of "394 [ppb] on 3/23/00" as evidence of "off-site contaminant migration" (Bolin Dep. Ex. 171.)</p>

			<p>Although Mr. Bolin purports to offer his “opinion as a hydrogeologist with extensive experience in remediation,” he testified during his deposition that he is “not an expert in remediation,” “remedial technologies,” or “fate and transport analysis.” (See discussion in ¶ 2 above.)</p>
<p>Unocal #7470 114 S. Bristol St. Santa Ana</p>	<p>24. The MTBE detection in well MW-20 on which OCWD’s accrual date is based was at 36 ppb. (Costley 2009 Decl. Ex. 1A.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in at least three other off-site monitoring wells at levels greater than the California Secondary MCL of 5 ppb: B-7, B-11, and B-12, as follows:</p> <p>MTBE was detected in B-7 beginning on October 2, 1998 at 10,000 ppb, and was detected in that monitoring well in all six sampling events prior to May 6, 2000, at a minimum level of 3,600 ppb. (SARWQCB-MTBE-028043 - SARWQCB-MTBE-028044.)</p> <p>MTBE was detected in B-11 on May 2, 2000 at 280 ppb. (SARWQCB-MTBE-028049.)</p> <p>MTBE was detected in B-12 on May 2, 2000 at 5.2 ppb. (SARWQCB-</p>	<p>24. Mr. Costley cites B-7, B-11 and B-12 at the Unocal #7470 station associated with Plume 4 as examples of where “off-site” wells showed detections of MTBE prior to May 6, 2000. <i>See</i> Costley Decl., Ex. 1A. These wells, however, do not indicate that MTBE has escaped remediation at this site. Groundwater contour maps demonstrate that the shallow groundwater flow is principally to the South at this station. (Bolin Decl., Ex. 14.) B-7 and B-11 are not downgradient from the release site, and are located fairly close to the station at a maximum of 65 feet to the Southwest of the station. B-12 is located approximately 160 feet downgradient from the release, indicating ongoing efforts to characterize the plume as part of remediation. MW-20 is 280 feet downgradient from the release site, is the furthest downgradient well from the release site and showed an MTBE detection of 2.2 ppb in 2002. The most recent remediation reports for the Unocal #7470 do not indicate that further efforts to define the plume or expand the area</p>	<p>24. When deposed as the District’s Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined “off-site contamination” as “[d]etections of MTBE in a well outside the boundaries of the property.” (Bolin Dep. 356:2-22; <i>see also id.</i> 1888:25-1890:3; 1933:12-1934:3.) Mr. Bolin also testified that an MTBE detection in a monitoring well “near the site boundary... indicate[s] there is off-site contamination.” (<i>Id.</i> 357:4-16.)</p> <p>Mr. Bolin now asserts that detections in B-7, B-11 and B-12 “do not indicate that MTBE has escaped remediation at this site,” even though these detections were up to “approximately 160 feet downgradient from the release site.” (Bolin 2009 Decl. ¶ 31)</p> <p>Mr. Bolin is mistaken in claiming that there are no “further efforts to define the plume or expand the area of remediation ... underway or anticipated.” (Bolin Decl. ¶ 31.) Whenever new</p>

	MTBE-028051.)	of remediation are underway or anticipated. In my opinion as a hydrogeologist with extensive experience in remediation, this detection in MW-20 is the first real indication at this site that MTBE has escaped active remediation efforts and is threatening drinking water sources. (Bolin Decl., ¶ 31.)	<p>information becomes available during the remediation process, consultants and/or regulators evaluate what additional or different investigation or remedial actions, if any, are required. (London Decl. ¶ 4.) In this way, appropriate action can and has been taken at any stage in the remediation process leading up to final case closure. (London Decl. ¶ 6.) A new form of active remediation recently commenced at this station: injection of hydrogen peroxide into select onsite wells. (London Decl. ¶ 5.) This change in strategy was based in part on evaluation of the ongoing groundwater data collected at the site. (<i>Id.</i>)</p> <p>Although Mr. Bolin purports to offer his “opinion as a hydrogeologist with extensive experience in remediation,” he testified during his deposition that he is “not an expert in remediation,” “remedial technologies,” or “fate and transport analysis.” (See discussion in ¶ 2 above.)</p>
Thrifty #008 704 N. Bristol St. Santa Ana	<p>25. The MTBE detection in well B-28 on which OCWD’s accrual date is based was at 43 ppb. (Costley 2009 Decl. Ex. 1A.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in at least six other off-site monitoring wells at levels greater</p>	25. Mr. Costley cites BW-9, BW-10, BW-13, BW-14, BW-15, and BW-16 at the Thrifty #008 station associated with Plume 4 as examples of where “off-site” wells showed detections of MTBE prior to May 6, 2000. <i>See</i> Costley Decl., Ex. 1A. These wells, however, do not indicate that MTBE has escaped remediation at this site.	25. When deposed as the District’s Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined “off-site contamination” as “[d]etections of MTBE in a well outside the boundaries of the property.” (Bolin Dep. 356:2-22; <i>see also id.</i> 1888:25-1890:3; 1933:12-1934:3.) Mr. Bolin also testified that an MTBE



	<p>than the California Secondary MCL of 5 ppb: BW-9, BW-10, BW-13, BW-14, BW-15, and BW-16, as follows:</p> <p>MTBE was detected in BW-9 and BW-10 beginning on June 30, 1999 at levels of 570 ppb and 1,000 ppb, respectively, and was detected in BW-9 in two subsequent testing events, and in BW-10 in all three subsequent testing events, prior to May 6, 2000. (SARWQCB-MTBE-020059; AROCWD950610608-9.) MTBE was detected in BW-13 on April 27, 2000 at 26.5 ppb. (AROCWD950610611; SARWQCB-MTBE-020062.) MTBE was detected in BW-14 on January 6, 2000 and April 27, 2000, at levels of 12 ppb and 16 ppb, respectively. (AROCWD950610612; SARWQCB-MTBE-020062.) MTBE was detected in BW-15 and BW-16 beginning on January 6, 2000 at levels of 850 ppb and 8,000 ppb, respectively, and was also detected on April 27, 2000 at levels of 1,240 ppb and 5,680 ppb, respectively. (SARWQCB-MTBE-020063-64; AROCWD950610613-14.)</p> <p>The Regional Water</p>	<p>Groundwater contour maps demonstrate that the shallow groundwater flow is principally to the Southwest at this station. (Bolin Decl., Ex. 12.) All of these wells are located fairly close to the station at a maximum of 100 feet to the Southwest and West of the station. In fact, BW-10, BW-15, and BW-16 have been used by Thrifty's consultant to remediate contamination at this site. Instead, B-28, 525 feet downgradient from the release site, is the furthest downgradient well from the release site and showed an MTBE detection of 43 ppb in 2003. The most recent remediation reports for the Thrifty #008 do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. In my opinion as a hydrogeologist with extensive experience in remediation, this detection in B-28 is the first real indication at this site that MTBE has escaped active remediation efforts and is threatening drinking water sources. (Bolin Decl., ¶ 29.)</p> <p>The Santa Ana Regional Water Quality Control Board's determination that MTBE had migrated "off-site" at the Thrifty #008 is not determinative of the District's accrual date at this station because it does not satisfy the District's criterion for accrual of the District's claims.</p>	<p>detection in a monitoring well "near the site boundary... indicate[s] there is off-site contamination." (<i>Id.</i> 357:4-16.)</p> <p>Mr. Bolin now asserts that detections in BW-9, BW-10, BW-13, BW-14, BW-15, and BW-16 "do not indicate that MTBE has escaped remediation at this site," even though some of these wells are up to 100 feet downgradient of the station. (Bolin 2009 Decl. ¶ 29.) In his notes prepared for the deposition, Mr. Bolin identified June 1999 detections in "near off-site" wells BW-9 &amp; BW-10. (Bolin Dep. 2491:4-2492:7, Ex. 168.)</p> <p>Although Mr. Bolin purports to offer his "opinion as a hydrogeologist with extensive experience in remediation," he testified during his deposition that he is "not an expert in remediation," "remedial technologies," or "fate and transport analysis." (See discussion in ¶ 2 above.)</p>
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	Quality Control Board sent a letter to Thrifty Oil on November 2, 1999, stating "MTBE has migrated off-site in the downgradient direction." (OCWD-MTBE-001-253601.)		
<b><u>PLUME NO.</u></b> <b><u>5</u></b>	26. Plume 5 was previously addressed in the 2008 round of supplemental briefing, and Defendants' undisputed facts supporting their position regarding this plume can be found in their 56.1 statement submitted in that briefing at ¶¶ 35-36.	26. Defendants' prior response asserts that the lack of a designated well or threatened well for Plume 5 means that District has not yet suffered a cognizable injury. For purposes of statute of limitations, therefore, defendants concede that the District's claims with respect to Plume 5 are not time-barred.  2. Defendants' prior response also asserts that the District must prove that MTBE released at the Plume 5 station actually threatens a well in order to sustain the District's claim. This argument is irrelevant for purposes of statute of limitations.	26. Under the Court's rulings at the May 15, 2009 status conference, Plume 5, and this station, have been deleted from the list of focus plumes.
Unocal #5356 1913 W. Edinger Santa Ana	27. The MTBE detection in well MW-22 on which OCWD's accrual date is based was at 840 ppb. (Costley 2009 Decl. Ex. 1D.)  Prior to May 6, 2000, MTBE was detected at this station in on-site monitoring wells from at least January 10, 1996 at levels consistently above California's Secondary MCL of 5 ppb, (See OCWD-	27. Mr. Costley's accrual date is based solely on detections of MTBE in monitoring wells that are "on site" under even Mr. Costley's definition of that term. <i>See</i> Costley Decl., Ex. 1D. Levels of contamination reflected in the monitoring well data cited by Mr. Costley are consistent with core remedial activities at almost any site. Because these wells are part of the remedial activities, they do not provide any indication as to whether MTBE has escaped remediation at this station.	27. When deposed as the District's Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined "off-site contamination" as "[d]etections of MTBE in a well outside the boundaries of the property." (Bolin Dep. 356:2-22; <i>see also id.</i> 1888:25-1890:3; 1933:12-1934:3.) Mr. Bolin also testified that an MTBE detection in a monitoring well "near the site boundary... indicate[s] there is off-site contamination." ( <i>Id.</i> 357:4-

	<p>MTBE-001-252069 - 121.) Many of these early detections were at extremely high levels. For example, on April 24, 1997, MTBE was detected at MW-9 at 1.9 million ppb, which is 380,000 times the Secondary MCL. (OCWD-MTBE-001-252087; <i>see</i> Costley 2009 Decl. Ex. 1D.) OCWD concedes this detection as well other onsite MTBE detections prior to May 6, 2000. (Bolin Dep. at Ex. 96). Indeed, MW-9 had four MTBE detections at or above 1 million ppb prior to May 6. (OCWD-MTBE-001-252087 - 88.)</p>	<p>The most recent remediation reports for the Unocal #5356 site do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. Therefore, in my opinion, the first real hydrogeologic evidence that MTBE had escaped was when MTBE had been detected in monitoring well MW-22. (Bolin Decl., ¶ 32.)</p>	<p>16.)</p> <p>Although now asserting that detections in well MW-9 “do not provide any indication as to whether MTBE has escaped remediation at this station,” Mr. Bolin previously identified detections of MTBE and TBA in well MW-9 (which had an MTBE detection at 1.9 million ppb in April 1997) as the basis for his belief that contamination had “escaped from remediation at Unocal # 5356. (Bolin Dep. 1791:18-1792:5.)</p> <p>Mr. Bolin rejects numerous off-property wells relied on by defendants as “too close” to the station or “too shallow.” <i>E.g.</i>, Bolin Decl. ¶ 37 (ARCO 3585, 50 feet from station), ¶ 46 (Unocal #5123, 50 feet from station), ¶ 16 (G&amp;M Oil # 4, 65 feet from station), ¶ 24 (Mobil #18-HDR, 65 feet from station), ¶ 31 (Unocal #7470, 65 feet from station), ¶ 29 (Thrifty #008, 100 feet from station), ¶ 31 (Unocal #7470, 160 feet from station). Yet, for the present station, he opines that MTBE detected in MW-22 represents “real hydrogeological evidence that MTBE had escaped” although this well is located approximately 35 feet outside the property and is only 4-24 feet deep. (Finsten 2009 Reply Decl. ¶ 6, Ex. 5.)</p> <p>Mr. Bolin is mistaken in claiming that there are no</p>
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			<p>“further efforts to define the plume or expand the area of remediation ... underway or anticipated” at this station. (Bolin Decl. ¶ 32.) This assertion is contradicted by his own deposition testimony, in which he admitted that “[t]o my knowledge, there is still some ongoing remediation activities at the site.” (Bolin Dep. 1792:19-20.)</p> <p>Whenever new information becomes available during the remediation process, consultants and/or regulators evaluate what additional or different investigation or remedial actions, if any, are required. (London Decl. ¶ 4.) In this way, appropriate action can and has been taken at any stage in the remediation process leading up to final case closure. (London Decl. ¶ 6.)</p> <p>Although Mr. Bolin purports to offer his “opinion as a hydrogeologist with extensive experience in remediation,” he testified during his deposition that he is “not an expert in remediation,” “remedial technologies,” or “fate and transport analysis.” (See discussion in ¶ 2 above.)</p>
<b>PLUME NO.</b> <b>6</b> <b>NB-DOLS</b> <b>NB-DOLD</b>	28. Plume 6 was previously addressed in the 2008 round of supplemental briefing, and Defendants’ undisputed facts supporting their position regarding this plume can be found in their 56.1	28. Defendants’ prior response asserts that detections of MTBE below 1 ppb in NB-DOLS and NB-DOLD are insufficient to constitute a cognizable injury or to require the District to take action.	



	statement submitted in that briefing at ¶¶ 37-42.	<p>For purposes of statute of limitations, therefore, defendants concede that the District's claims with respect to these wells and Plume 6 are not time-barred.</p> <p>2. Defendants' prior response also asserts that the District must prove that MTBE released at a Plume 6 station actually contaminated NB-DOLS and NB-DOLD in order to bring a claim. This argument is irrelevant for purposes of statute of limitations.</p>	
Thrifty #085 17475 Brookhurst St. Fountain Valley	<p>29. The MTBE detection in well NB-DOLD on which OCWD's date is based was at 0.04 ppb. (Costley 2009 Decl. Ex. 1B.) However, under the District's accrual criteria, accrual may rest on an MTBE detection in a water production well <i>only</i> "[f]or stations where no off-site monitoring wells were installed." (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in at least six off-site monitoring wells at levels greater than the California Secondary MCL of 5 ppb: MW-9, MW-11, MW-102, MW-103, MW-K1, and MW-K2, as follows: (See OCWD-MTBE-001-263660 - 62; OCWD-</p>	<p>29. Mr. Costley cites MW-9, MW-11, MW-K1, MW-K2, MW-102, and MW-103 at the Thrifty #085 station associated with Plume 6 as examples of where "off-site" wells showed detections of MTBE prior to May 6, 2000, at a site where the District concluded there were no off-site wells, and therefore detections of MTBE in the nearest production well provided the date on which the District's cause of action accrued for releases from the station. See Costley Decl., Ex. 1B. These wells, however, do not indicate that MTBE has escaped remediation at this site. Groundwater contour maps demonstrate that the shallow groundwater flow is principally to the Southeast at this station. (Ex. 15.) MW-9, MW-11, MW-K1, MW-K2, MW-102, and MW013 are located in close proximity to the release at the station. In my opinion as a hydrogeologist with extensive</p>	<p>29. To justify the District's reliance on purported MTBE detections in a production well to establish its accrual date, Mr. Bolin's declaration asserts that "the District concluded there were no off-site wells" at Thrifty #085. (Bolin 2009 Decl. ¶ 35.) However, when deposed as the District's Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined "off-site contamination" as "[d]etections of MTBE in a well outside the boundaries of the property." (Bolin Dep. 356:2-22; see also <i>id.</i> 1888:25-1890:3; 1933:12-1934:3.) Mr. Bolin also testified that an MTBE detection in a monitoring well "near the site boundary ... indicate[s] there is off-site contamination." (<i>Id.</i> 357:4-16.)</p> <p>Although Mr. Bolin purports to offer his "opinion as a hydrogeologist with</p>

	<p>MTBE-001-263671 - 76.)</p> <p>MTBE was detected in MW-9 at levels of 37 ppb on November 17, 1998. (OCWD-MTBE-001-263660.) MTBE was detected in MW-11 at a level of 230 ppb on May 19, 1999, 240 ppb in August 1999, 280 ppb on November 4, 1999, and 210 ppb on February 3, 2000. (MTBE-OCWD-001-263662.) MTBE was detected in MW-K1 at a level of 300 ppb on November 11, 1997. (OCWD-MTBE-001-263670.) MTBE was detected in MW-K2 at a level of 51 ppb on November 11, 1997. (OCWD-MTBE-001-263671.) MTBE was detected in MW-102 at a level of 7.8 ppb on February 7, 1996, and 17 ppb on November 17, 1998. (OCWD-MTBE-001-263674.) MTBE was detected in MW-103 at levels of 15 ppb, 13 ppb, and 19 ppb on February 7, 1996, May 13, 1996, and August 12, 1996, respectively, and 33 ppb on February 3, 2000. (OCWD-MTBE-001-263676.)</p> <p>Orange County Health Care Agency documented the migration of MTBE off-site in a September 29, 1998 letter to Thrifty Oil. (OCWD-MTBE-</p>	<p>experience in remediation, these wells are associated with the core remedial activities at this station. The most recent remediation reports for the Thrifty #085 site do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. Therefore, the first real hydrogeologic evidence that MTBE had escaped was when MTBE had been detected in a production well. (Bolin Decl., ¶ 35.)</p> <p>The Orange County Health Care Agency's determination that MTBE had migrated "off-site" at the Thrifty #008 is not determinative of the District's accrual date at this station because it does not satisfy the District's criterion for accrual of the District's claims.</p>	<p>extensive experience in remediation," he testified during his deposition that he is "not an expert in remediation," "remedial technologies," or "fate and transport analysis." (See discussion in ¶ 2 above.)</p>
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Arco #6116 17520 Brookhurst St. Fountain Valley	<p>30. The MTBE detection in well VA-4S on which OCWD's date is based was at 1300 ppb. (Costley 2009 Decl. Ex. 1D.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in on-site monitoring wells from at least September 2, 1998, at concentrations as high as 43,000 ppb. (<i>Id.</i>; Sartoris 2006 Decl. Ex. 15.)</p>	<p>30. Mr. Costley's accrual date is based solely on detections of MTBE in monitoring wells that are "on site" under even Mr. Costley's definition of that term. <i>See</i> Costley Decl., Ex. 1D. Levels of contamination reflected in the monitoring well data cited by Mr. Costley are consistent with core remedial activities at almost any site. Because these wells are part of the remedial activities, they do not provide any indication as to whether MTBE has escaped remediation at this station. The most recent remediation reports for the Arco # 6116 site do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. Therefore, in my opinion, the first real hydrogeologic evidence that MTBE had escaped was when MTBE had been detected in monitoring well VA-4S. (Bolin Decl., ¶ 33.)</p>	<p>30. Mr. Bolin testified that an MTBE detection in a monitoring well "near the site boundary... indicate[s] there is off-site contamination." (Bolin Dep. 357:4-16.)</p> <p>Mr. Bolin is mistaken in claiming that there are no "further efforts to define the plume or expand the area of remediation ... underway or anticipated" at this station. (Bolin Decl. ¶ 33.) At each stage in the remediation process, and whenever new information becomes available, BP, its consultants, and the regulators, evaluate what additional or different actions, if any may be required. (Fah Decl. ¶¶ 3-4.) When new information becomes available indicating that a modification to the remediation measures being taken at a site is called for, appropriate action will be taken at any stage in the process, even years after an initial remediation program is commenced. (<i>Id.</i> ¶¶ 4-5.) (See discussion of new remedial technology proposed in January 2009 at station ARCO # 1887, ¶ 3 above.)</p> <p>Although Mr. Bolin purports to offer his "opinion as a hydrogeologist with extensive experience in remediation," he testified during his deposition that he is "not an expert in</p>